IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIO PECINA **PLAINTIFF**

vs. No. 5:16-cv-1161

XTREME DRILLING & COIL SERVICES, INC. **DEFENDANT**

ORIGINAL COMPLAINT

COMES NOW Plaintiff Mario Pecina ("Plaintiff"), by and through his attorney Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint ("Complaint") against Defendant Xtreme Drilling & Coil Services, Inc. (hereinafter "Xtreme" or "Defendant"), does hereby state and allege as follows:

I. PRELIMINARY STATEMENTS

1. Plaintiff brings this action under the Fair Labor Standards Act, 29 US.C. § 201, *et seq.* ("FLSA"), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest and costs, including a reasonable attorney's fee as a result of Defendant's policy and practice of failing to pay Plaintiff overtime compensation for the hours in excess of forty hours in a single week that he was made to work.

2. Upon information and belief, for at least three (3) years prior to the filing of this Complaint, Defendant has willfully and intentionally committed violations of the FLSA as described, infra.

II. JURISDICTION AND VENUE

3. The United States District Court for the Western District of Texas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331

because this suit raises federal questions under the FLSA.

4. The acts complained of herein were committed and had their principal effect against Plaintiff within the San Antonio Division of the Western District of Texas; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

5. Plaintiff Mario Pecina ("Pecina") is an individual and resident of Bexar County, Texas.

6. Xtreme is a Texas company with its headquarters in Houston. It is "an onshore drilling and coiled tubing services contractor that works with exploration and production companies in the U.S., Canada and international markets." Xtreme may be served through its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

7. Defendant's principal address is 9805 Katy Freeway, Suite 650, Houston, Texas 77024.

IV. FACTUAL ALLEGATIONS

8. Plaintiff repeats and re-allege all previous paragraphs of this Complaint as though fully incorporated herein.

9. Defendant's annual gross revenues exceeded $500,000.00 for each of the four years preceding the filing of the Complaint.

10. Defendant employed at least two or more individuals who routinely used hard hats, drilling equipment, lubricators, blow-out preventers, wrenches, and other tools that were produced for or traveled in interstate commerce to perform their job duties.

11. Defendant employed Equipment Operators and Hands to carry out its oil drilling, coil tubing, and/or fracking services.

12. Defendant paid Equipment Operators and Hands a salary plus bonuses until approximately August of 2015.

13. When Defendant paid Equipment Operators and Hands a salary plus bonuses, Defendant did not pay them any overtime premium for hours worked over forty per week.

14. Around August of 2015, Defendant began paying Equipment Operators and Hands an hourly wage plus bonuses.

15. When Defendant paid Equipment Operators and Hands an hourly wage plus bonuses, Defendant did not include bonuses in the calculation of their regular rate for overtime purposes.

16. Call performed the duties of an Equipment Operator for Defendant from approximately August of 2015 through June of 2016.

17. Call regularly worked more than forty hours per week.

18. Plaintiff's duties primarily involved manual labor, operating equipment used for fracking oil wells.

19. Plaintiff did not supervise employees.

20. Plaintiff was not required to have a college degree or even high school diplomas to perform his job duties for Defendant.

21. Defendant knew, or showed reckless disregard for whether its pay practices toward Plaintiff violated the FLSA.

V. CLAIM FOR RELIEF

22. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint above, as if fully set forth herein.

23. Defendant intentionally failed to pay Plaintiff the lawful amount of overtime compensation

24. Defendant deprived Plaintiff of lawful overtime compensation for all of the hours over forty (40) per week in violation of the FLSA.

25. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

26. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA for all violations which occurred beginning at least three (3) years preceding the filing of this Complaint, plus periods of equitable tolling.

27. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

VI. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Mario Pecina prays for declaratory relief and damages as follows:

(a) That Defendant be summoned to appear and answer herein;

(b) That Defendant be required to account to Plaintiff and the Court for all of the hours worked by Plaintiff and all monies paid to them;

(c) A declaratory judgment that Defendant's practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*;

(d) Judgment for damages for all unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*;

(e) Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 US.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*, in an amount equal to all unpaid overtime compensation owed to Plaintiff during the applicable statutory period;

(f) An order directing Defendant to pay Plaintiff prejudgment interest, reasonable attorney's fees and all costs connected with this action; and

(g) Such other and further relief as this Court may deem necessary, just and proper.

Respectfully submitted,

PLAINTIFF MARIO PECINA

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